

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 303

April 23, 1965

## DEDUCTIONS: SOIL AND WATER CONSERVATION EXPENSES

### Syllabus:

The taxpayer purchased a 640 acre parcel of land, subject to a lease that was due to expire in three years. However, the lessee agreed to surrender 160 acres each year. The tenant was growing various crops on the land prior to the transfer to the taxpayer, and thereafter continued to grow these same crops on the remaining acreage which it retained. The taxpayer planned to devote the entire 640 acres to growing grapes. After the tenant surrendered the first 160 acres, the taxpayer made expenditures to grade and level the land pursuant to a plan to ultimately grade and level the entire 640 acres uniformly to replace the piecemeal grading and leveling that had been done at various times prior to acquisition. The taxpayer claimed a deduction for the expenditures each year under Section 24369 of the Bank and Corporation Tax Law.

Section 24369 provides that the term "land used in farming" means "land used (prior to the expenditure for conservation made by the taxpayer" [")"] by the taxpayer or its tenant or the predecessor owner or its tenant for the production of crops, fruits, and similar agricultural products or for the sustenance of livestock." Although regulations have not yet been adopted for Section 24369, regulations have heretofore been adopted for identical Section 17224 of the Personal Income Tax Law, and it is expected that identical regulations will be adopted for the Bank and Corporation Tax Law.

The most severe restrictions on qualifying as "land used in farming" are those placed on newly acquired land by the last two sentences of Paragraph (B) of Reg. 17224 (d). These provisions limit the use required to bring the taxpayer within the statute to something less than any farming use, but do not require that it be the exact use made of the land by the predecessor. A comparison of Examples (1) and (3) of the regulation is illustrative. The evident intent of the law is to require a continuity of adaptable farming use and to exclude any use resulting from a reconstruction of the land that completely changes the use for which the land is suitable.

On the basis of the facts presented, it is concluded that the land was suitable for growing grapes at the time it was acquired, that there was a substantial continuation of the use of the land, and that the grading and leveling did not constitute initial preparation of the land to make it suitable for a different particular use. Accordingly, the expenditures are within Section 14369. This type of expense is deductible in full for California purposes in the year incurred. No carry over of such expense is allowed.